

## **Exhibit B**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
MIDLAND/ODESSA DIVISION

DAVID SANCHEZ, Individually	)	
and On Behalf of All Others	)	
Similarly Situated,	)	
Plaintiff,	)	Case No.
	)	7:21-cv-203-DC-RCG
vs.	)	
	)	
	)	
TNT CRANE & RIGGING, INC.	)	FLSA Collective & Rule
Defendant.	)	23 Class Action

\* \* \* \* \*

ORAL DEPOSITION OF

TNT CRANE & RIGGING, INC.

BY AND THROUGH ANTOY BELL

SEPTEMBER 14, 2022

\* \* \* \* \*

ORAL DEPOSITION OF ANTOY BELL, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on September 14, 2022, from 12:02 p.m. to 1:58 p.m., before Christy Fagan, CSR, CRR, RMR, TMR, RPR in and for the State of Texas, considered being taken at the witness's location of Houston, Texas, pursuant to the Federal Rules of Civil Procedure.

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1           A     Yes.  Correct.

2           Q     And you also similarly testified about TNT's  
3 policies and practices with regard to when they did or  
4 didn't pay crane operators for various preparatory and  
5 concluding tasks including things like obtaining and  
6 loading fuel, diesel exhaust fluid, lubricants, water,  
7 ice and other items onto their vehicles and picking up  
8 and dropping off riggers, correct?

9           A     Yes.

10          Q     And was your testimony complete and accurate  
11 about what TNT's policies and practices were at the time  
12 you testified at that last deposition?

13          A     Yes, my testimony was accurate.

14          Q     Have there been any changes to those policies  
15 or practices for TNT's Midland branch since your last  
16 deposition?

17          A     No.

18          Q     Well, that makes a lot of this easier.

19          A     I can pack up and go home now, is that what  
20 you're saying?

21          Q     I'm still going to have some questions, but we  
22 just -- that just made our day -- this deposition  
23 shorter, I can tell you that much.

24                   Are there any other policies establishing  
25 -- that establish under what circumstances TNT does or

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1 does not pay crane operators out of its Midland branch  
2 for any preparatory, conclu- -- or concluding tasks that  
3 you didn't already testify about in your last  
4 deposition?

5 A No, there are not.

6 Q And same question with regard to are there any  
7 other policies or practices with regard to paying or not  
8 paying for travel time for crane operators out of the  
9 Midland branch that you didn't already testify about at  
10 your last deposition?

11 A No, there are not.

12 Q And does TNT make exceptions to those policies  
13 for individual employees?

14 A For a individual employee, will we make  
15 exceptions to our travel policy?

16 Q That's right. To tho- -- the policies that we  
17 just -- that I just asked you about, those policies that  
18 dictate under what circumstances TNT does or doesn't pay  
19 for travel time or for preparatory and concluding tasks?

20 A No, it's not typical that we make exceptions  
21 to our policies.

22 Q Can you think of -- when you say not typical,  
23 do you think that TNT ever makes exceptions to those  
24 policies?

25 A Not that I am aware of.

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1 Q So you -- so TNT applies those same policies  
2 and practices to all employees -- excuse me, to all  
3 crane operators who are employed and paid out through  
4 the Midland branch?

5 A Correct.

6 Q Mr. Bell, you've never -- have you ever  
7 operated a crane yourself?

8 A I have not.

9 Q And you don't have the training or credentials  
10 to operate a crane, do you?

11 A No, I do not.

12 Q You don't know how to operate a crane  
13 yourself?

14 A I don't.

15 Q The principal activity of crane operators is  
16 to operate cranes; would you agree?

17 A Yes.

18 Q Is fueling a drag tank an integral or  
19 indispensable task to the activity of operating cranes?

20 MR. BULLER: Object to form.

21 A No, it's not.

22 Q And why not?

23 MR. BULLER: Same objection.

24 A You don't need a drag tank to operate a crane.

25 Q But you do need fuel to operate a crane,

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1 Q Have you reviewed this answer that TNT filed?

2 A Yes, I did take a look at it.

3 Q I'm going to scroll down here.

4 MR. JOHNSON: Oh. And this is -- for the  
5 record, this is what we'll mark as Exhibit 1.

6 Q I'm going to scroll down to page 6 of the  
7 Answer, and you can see there toward the middle of the  
8 page there's the heading "AFFIRMATIVE AND OTHER  
9 DEFENSES." So I want to take a look at a few of these  
10 defenses and just understand a few things about them.  
11 Give me just a second.

12 MR. BULLER: Aaron, my comment applies  
13 from earlier that, obviously, you can certainly  
14 investigate the -- investigate the defenses for the  
15 purpose of collecting discovery. At some point it  
16 becomes a merits discovery, but, I mean, obviously you  
17 have --

18 MR. JOHNSON: Understood.

19 MR. BULLER: We'll try to stay tailored  
20 to Plaintiff's discovery.

21 MR. JOHNSON: Understood.

22 Q All right. Let's look here at affirmative  
23 defense number 1, Mr. Bell. It says "Plaintiff's  
24 Complaint fails to state a claim upon which relief can  
25 be granted." Can you just explain in short what y'all

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1 mean by that? What's that defense based on?

2 MR. BULLER: Objection to form. This one  
3 calls for a legal conclusion and it's a purely legal  
4 defense based on the pleadings.

5 A Yeah, that we're saying there was nothing that  
6 was -- that was done that the Plaintiff's complained  
7 about that the Courts could hold us liable for.

8 Q So that defense does not depend on facts  
9 specific to each Plaintiff? That applies to all of the  
10 potential Plaintiffs in this case, correct?

11 MR. BULLER: Objection, form.

12 Go ahead.

13 A It applies to -- there's only one Plaintiff in  
14 this case that this was about as what this applies to.

15 Q You understand this complaint was pled as a  
16 collective action, right?

17 A Yes.

18 Q And so am I correct to understand that this  
19 particular defense under number 1 here, this defense --  
20 your -- TNT's argument applies to all of the potential  
21 opt-in Plaintiffs in this case?

22 MR. BULLER: Objection to form.

23 A Yeah, it applies to the claims -- all the  
24 claims that are made in this case, yes.

25 Q Let's look -- scroll down to number 4. By the

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1 way, are you still seeing -- am I still sharing the same  
2 document here?

3 A You are.

4 Q Okay. You can see we've scrolled down to  
5 paragraph 4 under Affirmative Defenses?

6 A Yes.

7 Q It says "The FLSA claims of Plaintiff and the  
8 individual Plaintiff seeks to request are barred, in  
9 whole or in part, by the provisions of Section 10." I'm  
10 not going to read the entire paragraph there. Skipping  
11 forward, it says "because actions taken were done in  
12 good faith in conformity with and reliance upon written  
13 administrative regulations, orders, rulings, approvals,  
14 interpretations, and written and unwritten  
15 administrative practices or enforcement policies of the  
16 Department of Labor."

17 Do you know what particular regulations,  
18 orders, rulings, approvals, interpretations, practices,  
19 or policies this refers to?

20 MR. BULLER: Object to the extent it  
21 calls for a legal conclusion.

22 A No, I don't know all the detail orders.

23 Q You don't know what TNT is claiming to have  
24 relied on here?

25 MR. BULLER: Same objection.



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1           A     I mean, some of the orders -- rulings  
2     associated -- interpretations associated with the  
3     Portal-to-Portal Act, but I couldn't sit here and tell  
4     you every single one of those orders and rulings and  
5     interpretations.

6           Q     And, again, this defense applies to all of the  
7     potential opt-in Plaintiffs in this case, correct?

8                     MR. BULLER:  Objection, form.

9           A     Correct.

10          Q     The next section is -- or the next paragraph,  
11     number 5, is similar.  This is your affirmative defense  
12     that "any acts or omissions giving rise to this action  
13     were done in good faith and with reasonable grounds for  
14     believing that the actions or omissions were not a  
15     violation of the FLSA."

16                     Again, this applies to all of the  
17     potential opt-in Plaintiffs in this case, correct?

18                     MR. BULLER:  Objection to form.

19          A     Correct.

20          Q     Number 6 says "The alleged injuries of  
21     Plaintiff, any opt-in plaintiffs, or any punitive  
22     plaintiffs were not proximately caused by any unlawful  
23     policy, custom, practice or procedure promulgated or  
24     tolerated by Defendant."  What do you -- what does TNT  
25     mean by that?

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1 MR. BULLER: Objection to form.

2 A Means that we didn't have a policy or practice  
3 in place that caused harm to the Plaintiffs.

4 Q And, again, that defense applies to all of the  
5 potential opt-in Plaintiffs in this case, correct?

6 MR. BULLER: Objection to form.

7 A Correct.

8 Q Skipping down to number 10, "The claims of  
9 Plaintiff, any opt-in plaintiffs, any punitive  
10 plaintiffs are barred because the work performed falls  
11 within exception -- exemptions, exclusions, exceptions,  
12 or credits provided for in the FLSA or the New Mexico  
13 Wage Act."

14 What exemptions, exclusions, exceptions,  
15 or credits is this referring to?

16 MR. BULLER: Same objection to form.

17 A I couldn't tell you every detailed exemption,  
18 exclusion, or exception sitting here.

19 Q Can you tell me any at all or can you describe  
20 any of them generally?

21 MR. BULLER: Same objection.

22 A Generally, the commute to work, it's a  
23 exception in FLSA.

24 Q Are there any other exemptions, exclusions,  
25 exceptions, or credits that this defense is referring

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1 to?

2 MR. BULLER: Same objection.

3 A Sitting here right now, I couldn't tell you  
4 all of them.

5 Q You can't tell me any others at all?

6 MR. BULLER: Same objection.

7 A Not at the moment, no.

8 Q And, again, this defense applies to all of the  
9 potential Plaintiffs in this case, correct?

10 MR. BULLER: Objection, form.

11 A Correct.

12 MR. JOHNSON: Okay. I'll pass the  
13 witness.

14 A I wanted to clear up something I thought about  
15 on the break.

16 Q Sure. Go ahead.

17 A You asked me about anything in our records  
18 that could provide where someone worked, whether it was  
19 in New Mexico or Texas. We would have potentially for  
20 the more recent credit card transactions from about '20  
21 on, we may have some receipts that would tell me if that  
22 person was in New Mexico or in Texas or somewhere else.

23 And the time sheets should tell us that  
24 alone. Everyone's required to put the customer, the job  
25 number, and the state of -- that they worked in that

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2                   FOR THE WESTERN DISTRICT OF  
3                   MIDLAND/ODESSA DIVISION  
4     DAVID SANCHEZ, Individually     )  
5     and On Behalf of All Others     )  
6     Similarly Situated,             )  
7     Plaintiff,                     )     Case No.  
8                                     )     7:21-cv-203-DC-RCG  
9     vs.                             )  
10                                    )  
11                                    )  
12     TNT CRANE & RIGGING, INC.     )     FLSA Collective & Rule  
13     Defendant.                    )     23 Class Action

14                                   REPORTER'S CERTIFICATE  
15                   ORAL DEPOSITION OF TNT CRANE & RIGGING, INC.  
16                   BY AND THROUGH ANTOY BELL  
17                   SEPTEMBER 14, 2022

18               I, Christy Fagan, CSR, CRR, RMR, TMR, RPR,  
19     Certified Shorthand Reporter in and for the State of  
20     Texas, hereby certify to the following:

21               That the witness, ANTOY BELL, was duly sworn and  
22     that the transcript of the deposition is a true record  
23     of the testimony given by the witness;

24               I further certify that pursuant to FRCP Rule  
25     30(f)(1) that the signature of the deponent:

\_\_\_\_\_ was requested by the deponent or a party  
before the completion of the deposition and is to be  
returned within 30 days from date of receipt of the  
transcript. If returned, the attached Changes and  
Signature Pages contain any changes and the reasons  
therefor;

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1           \_\_\_\_\_ was not requested by the deponent or a party  
2 before the completion of the deposition.

3           That pursuant to information given to the  
4 deposition officer at the time said testimony was taken,  
5 the following includes all parties of record and the  
6 amount of time used by each party at the time of the  
7 deposition:

8 FOR THE PLAINTIFF:

9           Mr. Aaron Johnson (1 hour 43 minutes)  
Fair Labor Law  
10          314 E. Highland Mall Blvd.  
Suite 401  
11          Austin, Texas 78752  
(512) 277-3505  
12          (512) 277-3254 Fax  
ajohnson@fairlaborlaw.com

13

FOR THE DEFENDANT:

14

          Mr. Jay Buller (0 hours 1 minute)  
15          Littler Mendelson, P.C.  
1301 McKinney  
16          Suite 1900  
Houston, Texas 77010  
17          (713) 652-4721  
(713) 951-9212 Fax  
18          jbuller@littler.com

19

20          That \$\_\_\_\_\_ is the deposition officer's charges  
21 to the Plaintiff for preparing the original deposition  
22 and any copies of exhibits.

23          I further certify that I am neither counsel for,  
24 related to, nor employed by any of the parties in the  
25 action in which this proceeding was taken, and further

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1 that I am not financially or otherwise interested in the  
2 outcome of this action.

3 Certified to by me on this 27th day of September,  
4 2022.

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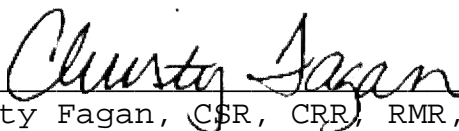
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Christy Fagan, CSR, CRR, RMR, TMR, RPR  
Texas CSR 5459  
Expiration: 10/31/23  
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Firm Registration No. 424  
2626 Cole Avenue  
Suite 300  
Dallas, Texas 75204  
(866) 830-1717  
(866) 651-4292 Fax  
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